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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Ecuador under article 29 (1) of the Convention

Addendum

Information received from Ecuador on follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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1. On 19 April 2017, the Committee on Enforced Disappearances issued its concluding observations on the initial report of Ecuador. In paragraph 26 of the document, the Ecuadorian State was requested to provide information on the follow-up to the recommendations contained in paragraphs 10 (Enforced disappearances allegedly committed between 1984 and 2008), 16 (Non-refoulement) and 22 (Legal situation of disappeared persons whose fate has not been clarified and that of their relatives). Accordingly, the Ecuadorian State hereby submits to the Committee the information requested.

Recommendation 10. The Committee recommends that the State party: (a) Take the necessary measures to expedite the judicial proceedings for enforced disappearance relating to the period from 1984 to 2008 that are under way; bring to trial, as soon as possible, cases that are at the preliminary investigation stage; and ensure that all suspected perpetrators are prosecuted and, if found guilty, punished in accordance with the grave nature of their acts.

2. Concerning preliminary investigation, the Attorney General's Office, as an autonomous body of the judicial branch, is responsible for conducting, of its own motion or at the request of a party, criminal pretrial and procedural investigations, paying special attention to the public interest and the rights of victims (articles 443 and 444 of the Comprehensive Organic Criminal Code).

3. In this regard, Decision No. 003-A-FGE-2012, published in Official Gazette No. 268, Special Edition, dated 23 March 2012, set out the rules regarding process-driven organizational management of the Attorney General's Office, rule 12 (2) (1) (5) of which established the Truth Commission and Human Rights Directorate of the Attorney General's Office, now the Directorate of Human Rights and Citizen Participation.[1]

4. According to article 1 of the instructions for the handling of cases of crimes against humanity and serious human rights violations issued by the Truth Commission Directorate,[2] this body is tasked with supporting and investigating cases of human rights violations at the national level.

5. The Directorate of Human Rights and Citizen Participation has a team of seven prosecutors, who are specially trained to deal with issues relating to serious human rights violations. In cases of enforced disappearance, the National Police does not assist the prosecutors in the investigation.

6. The Council of the Judiciary, for its part, as the administrative, supervisory and disciplinary body of the judiciary, has the duty to ensure compliance with the guiding principles of the administration of justice. Thus, articles 11, 75 and 169 of the Constitution and articles 15 and 20 of the Organic Code of the Judiciary[3] establish the principles of responsibility and expediency, stipulating that "the State shall be liable in cases of miscarriage of justice, arbitrary detention, unjustified delay or inadequate administration of justice, violation of the right to effective judicial protection, and violations of the principles and rules of due process".[4]

7. At the time of the preparation of this report, the cases of 11 victims of enforced disappearance from the period from 1984 to 2008 were under preliminary investigation and 6 cases were awaiting trial.

Recommendation 10. The Committee recommends that the State party: (b) Step up its efforts to locate any persons subjected to enforced disappearance during the period from 1984 to 2008 and whose fate is not yet known and, in the event of death, to identify, respect and return their remains in a dignified manner.

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[1] In accordance with Decision No. 001-FGE-2018, published in *Registro Oficial, Edición Especial* No. 304 of 26 February 2018, it is now called the Directorate of Human Rights and Citizen Participation and its mission is to "promote and publicize respect for human rights in pretrial criminal investigations and in the investigation of human rights violations in the national territory".

[2] Decision No. 040-FGE-2012, published in *Registro Oficial* No. 753 of 25 July 2012.

[3] *Registro Oficial Suplemento* No. 544 of 9 March 2009.

[4] Ibid., art. 15.

8. As stated in paragraphs 121 and 122 of the replies to the list of issues,[5] and as previously mentioned, the 17 cases of victims of enforced disappearance during the period from 1984 to 2008 are either at the pretrial stage in the Attorney General's Office or the subject of proceedings before the competent due-process judge.

9. With regard to potential disappearances in Ecuador, the Council of the Judiciary has adopted the Search, Investigation and Location Protocol for Disappeared, Missing or Lost Persons.[6] The Protocol is applicable both to current cases and to those in which it is presumed that an enforced disappearance took place in the past, with effects that continue in the present. The purpose of the Protocol is to establish the procedures to be followed by the National Police, the Attorney General's Office, the courts and other auxiliary bodies in taking immediate action to search for, investigate and locate disappeared persons in order to protect their life and physical integrity.

10. On 18 January 2018, the Ministry of the Interior announced the implementation of the Emilia alert system to report missing children and adolescents at immediate risk, which is implemented in various countries under the name Amber Alert. The Council of the Judiciary reports that, in addition to ongoing inter-agency coordination, efforts are under way to conclude an agreement with the Ministry of the Interior, the Attorney General's Office and the Ombudsman's Office for the establishment of the National Inter-Agency Committee for the Implementation of the Emilia Alert System, which will be responsible for developing policies for the protection of missing persons and strengthening the criteria for activating the alert system.

Recommendation 10. The Committee recommends that the State party (c) Continue and strengthen its efforts to ensure that all persons who have suffered harm as a direct result of an enforced disappearance perpetrated during the period from 1984 to 2008 receive full reparation, including measures for their rehabilitation.

11. In compliance with its obligations under both the Constitution and international human rights instruments on protection and reparation for victims of serious violations of their rights, Ecuador adopted the Act to provide redress for victims and ensure the prosecution of serious human rights violations and crimes against humanity committed in Ecuador between 4 October 1983 and 31 December 2008[7] (hereinafter the Victim Reparation Act), which was published in the supplement to Official Gazette No. 143 of 13 December 2013.

12. Article 4 of the Act provides for the establishment of the Redress Programme, administered by the Ombudsman's Office, for victims of human rights violations documented by the Truth Commission. Meanwhile, article 7 of the Act provides that compensation for material or non-material damage is paid through the Ministry of Justice, Human Rights and Religion, in compliance with the provisions of a compensation agreement or of an enforceable judgment, on the basis of the parameters established by the Inter-American Court of Human Rights.

13. On 13 November 2014, guidelines regulating the procedure for the Redress Programme[8] were adopted with a view to regulating the process of non-material reparation administered by the Ombudsman's Office. The Programme is implemented through the National Directorate for Reparations for Victims and Protection against Impunity,[9] which is responsible for the following services: physical rehabilitation and psychosocial support; legal advice, representation and assistance with prosecution; human rights education and the dissemination of the final report of the Truth Commission; implementation of symbolic measures and measures of satisfaction; and the filing and safeguarding of documentary records of human rights violations.[10]

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[5] Replies of Ecuador to the list of issues, submitted to the Committee on 13 February 2017.

[6] Decision No. 160-2012 of 8 November 2012.

[7] *Registro Oficial Suplemento* No. 143 of 13 December 2013.

[8] Ombudsman Decision No. 198 of 13 November 2014.

[9] Ombudsman Decision No. 042-DPE-DNATH-2014 of 4 April 2014, establishing the National Directorate for Reparations for Victims and Protection against Impunity.

[10] Victim Reparation Act, art. 9.

14. Direct victims of enforced disappearance documented by the Truth Commission and their spouses or common-law partners and relatives to the second degree of consanguinity are thus entitled to measures of redress, such as physical rehabilitation and psychosocial care; the deletion, on application, of all data and personal records found in the various judicial, police, military or other archives related to the events documented by the Truth Commission; and the search for, location and release of the disappeared person, which is the responsibility of the National Police, under the leadership of the Attorney General's Office. Should the person have died, these institutions are responsible for the exhumation, identification and return of remains to the person's relatives, who have the right to be informed of progress in the search for the person and to participate in the related action. Other entitlements are a declaration, on application, of a presumed death and of the definitive ownership of the property of the victims of enforced disappearance; job training, technical training or counselling aimed at economic inclusion; and the restitution of the paternal and maternal surnames of the children of victims who had been registered with the Civil Registry as other people's children in order to prevent their being persecuted or abused by the perpetrators of the serious rights violations committed against their biological parents.

15. In addition, under the Act, the Ministry of Justice, Human Rights and Religion issued regulations on the procedure for compensation agreements, the amounts to be paid in compensation and the measures for their enforcement,[11] on the basis of which, to date, 82 compensation agreements have been concluded. There are plans to hold a series of redress hearings with victims of cases documented by the Truth Commission throughout 2018.

16. As indicated in paragraph 116 of the replies to the list of issues,[12] the final report of the Truth Commission lists 17 cases of victims of enforced disappearance in respect of whom non-material reparation measures are being implemented and continuously monitored.

17. In this regard, Ecuador has taken the following steps, which have been applied generally to all of the Truth Commission cases, including cases of enforced disappearance:

- In coordination with the Ministry of Health, the Ombudsman's Office has trained Ministry of Health district coordinators, with the participation of direct victims. In addition, guidelines on strengthening support and psychosocial reparation for victims of human rights violations were developed, with the following results: 918 persons were identified for health care in accordance with their geographical situation, 540 persons were registered directly by the Ombudsman's Office and the Ministry of Health between 2015 and 2017, and 12 disability cards were issued;
- The Ombudsman's Office also conducted six workshops with victims in different provinces on issues related to psychoeducation for the reparation process and held seven workshops with its own team on the following topics: victim support, emotional relief, neurolinguistic programming, empathy and assertive communication;
- Wide publicity was given to the services of the Ministry of Labour in the provinces of Loja, Sucumbíos, El Oro, Pichincha and Azuay and a workshop on microenterprise management was held in the province of Sucumbíos. In addition, the Ministry included 233 persons in its institutional matrix so that they could receive personalized support in the agencies of the jobs network known as Red Socio Empleo, which is a public job-seeking programme;
- In coordination with the Ministry of Urban Development and Housing, a housing allowance was provided for 112 persons;
- Measures were taken jointly with BanEcuador to grant bank loans and to open accounts as part of the process of material reparation;

[11] *Registro Oficial Suplemento* No. 444 of 24 February 2015.

[12] Replies of Ecuador to the list of issues, submitted to the Committee on 13 February 2017.

- In coordination with the Secretariat for Higher Education, Science, Technology and Innovation, 69 students at Ecuadorian universities who are the children of victims were included in the Eloy Alfaro scholarship programme, and 19 international scholarships providing easy access were established;
- The Ministry of the Interior accepted 108 applications for the deletion of active and passive police records and carried out 97 checks and deletions of such records relating to the rights violations established in the report of the Truth Commission;
- Measures were taken jointly with the Civil Registry to correct the identity and filiation data of six persons and the death records of two persons;
- With regard to measures of symbolic and collective reparation and recovery of historical memory, the report of the Truth Commission was disseminated, in coordination with the Ministry of Education and with the support of the victims, and seven indirect victims were provided with inclusive education.

18. The Ministry of Culture and Heritage coordinated the terms of reference for the commissioning and establishment of the Museum of Memory. In addition, an international gathering on the theme "The importance of creating places of remembrance as part of the process of non-material remembrance" took place from 19 to 21 September 2016 with the participation of victims from across the country and international experts from Brazil, Argentina, Spain and Colombia. On 13 May 2017, a framework agreement was concluded between the Ministry of the Interior and the Ministry of Culture and Heritage for the allocation of 1,100 m^2 for this purpose in the Manuela Sáenz Police District, formerly the Criminal Investigation Service.

Recommendation 16. The Committee recommends that the State party ensure that no one is expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would face a risk of being subjected to enforced disappearance, in particular by ensuring that regulations relating to applications for refugee status are applied in a manner fully consistent with the prohibition of refoulement provided for in article 16 of the Convention.

19. Article 66 (14) of the Constitution provides that: "Foreigners may not be returned or expelled to a country in which their life, liberty, safety or security or that of their family members is endangered by reason of their ethnic identity, religion, nationality, ideology, membership of a given social group or political views."[13]

20. In addition, the Human Mobility Act,[14] which entered into force in February 2017 and was welcomed by bodies such as the Inter-American Commission on Human Rights and the Office of the United Nations High Commissioner for Refugees, sets forth principles such as universal citizenship and the free movement of people, such that no individual should be considered illegal because of his or her migration status, discrimination is emphatically repudiated and the equal rights of Ecuadorians and foreign nationals are respected.

21. Article 90 of the Act explicitly sets out the obligation of the State vis-à-vis foreign nationals subject to international protection "to ensure their equal access and exercise of their rights to enter Ecuadorian territory if their country of origin or residence cannot provide them with such protection, including the right not to be returned to their country of origin or to a third country where their safety or survival may be at risk, in accordance with the international human rights instruments to which Ecuador is a party".[15]

22. In accordance with article 90, international protection is granted in recognition of an individual's status as a refugee, asylum seeker or stateless person and ceases only when there is a lasting solution to the conflict that prompted his or her entry into the country or, in the case of voluntary repatriation, resettlement in a third country or the obtaining of the

[13] *Registro Oficial* No. 449 of 20 October 2008.
[14] *Registro Oficial Suplemento* No. 938 of 6 February 2017.
[15] Ibid., art. 90.

nationality of the host country in accordance with the rules set out in the Act. Foreign nationals who are granted such protection enjoy all rights under the Constitution.

23. Specifically, article 75 of the General Regulations of the Act,[16] issued through Executive Decree No. 111 and published in Official Gazette, Supplement No. 55 of 10 August 2017, establishes that: "The determination of refugee status shall be governed by the provisions and principles set out in the Constitution of the Republic, international human rights instruments, the Human Mobility Act, the provisions of these Regulations and the decisions adopted by the human mobility authorities."

24. Ecuador is a signatory of the Brazil Declaration and Plan of Action, which provide a framework for cooperation and regional solidarity to strengthen the international protection of refugees and displaced and stateless persons in Latin America and the Caribbean.[17] These instruments represent a positive initiative by States in the region, which have undertaken to come up with responses to the new challenges of international protection by seeking lasting solutions through measures such as the labour mobility of the refugee population, in accordance with the agreement.

25. The steps taken by the Ecuadorian Government to ensure the proper functioning and implementation of the provisions of the regulatory framework applicable to enforced disappearances in Ecuador include the following:

- Opening, fitting out and equipping offices for shelter units nationwide, particularly in border areas with a greater number of asylum seekers, namely Lago Agrio, Esmeraldas, Ibarra, Quito, Guayaquil, Azogues, Santo Domingo and San Lorenzo, among others;
- Training for public servants responsible for determining refugee status in Ecuador, with a view to preparing them to deal with cases and situations arising from asylum applications, on the basis of the principles of equality and non-discrimination; automation of the process to ensure the quality of services provided for asylum seekers and refugees in Ecuador; referral of cases to non-governmental organizations (NGOs) for the delivery of humanitarian, legal or educational assistance; and awareness-raising, together with public institutions and private entities, on the procedure for determining refugee status and the rights of asylum seekers and refugees, so that they can be properly integrated into society;
- Training for various public institutions and private entities in matters relating to asylum, including the procedure for determining refugee status;
- Organization of events and exhibitions to mark World Refugee Day in various cities across Ecuador;
- Preparation and mass distribution of information leaflets on the asylum-seeking procedure.

Recommendation 22. In the light of article 24 (6) of the Convention, the Committee recommends that the State party adopt the measures necessary to ensure that domestic law deals appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, without the presumed death of the disappeared person having to be declared. In this respect, the Committee encourages the State party to establish a procedure to obtain a declaration of absence by reason of enforced disappearance.

26. Article 6 (4) of the Victim Reparation Act sets out individual reparation measures, including an express reference to "the declaration, on application, of a presumed death and of the definitive ownership of the property of the victims of enforced disappearance, by virtue of the presumption of death by disappearance, in accordance with articles 68 to 80 of

[16] *Registro Oficial Suplemento* No. 55 of 10 August 2017.

[17] On 2 and 3 December 2014, the Governments of Latin America and the Caribbean met on the occasion of the thirtieth anniversary of the 1984 Cartagena Declaration on Refugees. The Brazil Declaration and Plan of Action were adopted as part of the closing statement.

the Civil Code. For this purpose, articles 66 and 67 of the Civil Code shall not apply", given that, under those articles, a declaratory ruling is required.

27. In order to avoid revictimization in view of the uncertainty caused by an enforced disappearance, the fact that these two articles do not apply means that the declaration of absence by reason of enforced disappearance prior to a decision on the administration of property does not involve a judicial procedure to declare the presumed death of the disappeared person but requires no more than recognition granted by the Redress Programme in cases documented by the Truth Commission. Indirect victims do not have to go through a new procedure to demonstrate that a victim has disappeared, provided that there is official recognition by the State.

28. Article 19 of the guidelines regulating the procedure for the Redress Programme[18] provides that, "taking the measures set out in articles 6 and 9 of the [Victim Reparations] Act as a starting point, reparation measures adapted to each specific case shall be identified during working meetings, along with potential alternatives to address or resolve them". In other words, specific reparation measures are identified in each case for the indirect victims, including the definition of an administrative declaration of absence by reason of disappearance.

29. Decisions on the provisional and definitive administration of property are thus taken by the courts, in accordance with the procedure for presumed death set out in articles 68 to 80 of the Civil Code. The purpose of this procedure is purely to ensure that property is not abandoned.[19] The State's obligations with regard to disappearance in civil matters differ from those in criminal matters and the protection of human rights and reparation for victims.

30. Consequently, a declaration of absence by reason of disappearance does not affect criminal proceedings for the investigation of an enforced disappearance, in accordance with article 84 of the Criminal Code, which expressly recognizes disappearance as an offence. According to the case law of the Constitutional Court relating to cases of disappearance, the State institutions involved in an investigation have "a legal obligation to try to coordinate their efforts … but none of them may conclude their investigation and enforcement procedures until a final decision has been taken".[20] The State is thus constantly adopting the necessary measures to adequately address the legal situation of direct and indirect victims by means of an appropriate mechanism for the declaration of absence by reason of enforced disappearance, without the need for a declaratory ruling of presumed death, as established in the Civil Code.

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[18] *Registro Oficial Suplemento* No. 127 of 6 November 2017. Decision No. DPE 198.

[19] See Luis Parraguez, *Manual de Derecho Civil Ecuatoriano. Personas y Familia*, vol. I (Jan. 2004), pp. 55–56.

[20] Decision No. 76 of the Constitutional Court, *Registro Oficial Suplemento* No. 320 of 25 July 2006.